

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

MARSHALL SAUL LEWIS, M.D.)

Case No. 800-2014-009437

**Physician's and Surgeon's)
Certificate No. G28242)**

Respondent)
_____)

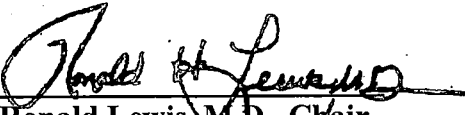
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 30, 2018.

IT IS SO ORDERED February 28, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 MICHAEL C. BRUMMEL
Deputy Attorney General
4 State Bar No. 236116
California Department of Justice
5 2550 Mariposa Mall, Room 5090
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6 Telephone: (559) 477-1679
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7 E-mail: Michael.Brummel@doj.ca.gov

8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **MARSHALL SAUL LEWIS, M.D.**
15 **2619 F Street**
Bakersfield, CA 93301

16 **Physician's and Surgeon's Certificate**
17 **No. G 28242**

18 Respondent.

OAH Case No. 2017081162

Case No. 800-2014-009437

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Michael C.
25 Brummel, Deputy Attorney General.

26 2. Respondent Marshall Saul Lewis, M.D. (Respondent) is represented in this
27 proceeding by attorney Dennis R. Thelen, Esq., whose address is: P.O. Box 12092, Bakersfield,
28 CA 93389-2092.

1 3. On or about October 4, 1974, the Board issued Physician's and Surgeon's Certificate
2 No. G 28242 to Marshall Saul Lewis, M.D. (Respondent). The Physician's and Surgeon's
3 Certificate No. G 28242 was in full force and effect at all times relevant to the charges brought in
4 Accusation No. 800-2014-009437, and will expire on December 31, 2018, unless renewed.

5 JURISDICTION

6 4. Accusation No. 800-2014-009437 was filed before the Board, and is currently
7 pending against Respondent. The Accusation and all other statutorily required documents were
8 properly served on Respondent on August 2, 2017. Respondent timely filed his Notice of
9 Defense contesting the Accusation.

10 5. A copy of Accusation No. 800-2014-009437 is attached as Exhibit A and
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 800-2014-009437. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

17 7. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 CULPABILITY

26 9. Respondent does not contest that, at an administrative hearing, complainant could establish
27 a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-
28 2014-009437 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 28242 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Respondent Marshall Saul Lewis, M.D., Physician's and Surgeon's Certificate No. G 28242, shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in connection with Respondent's medical record keeping, billing and quality of care in the treatment of a single patient as set forth in Accusation No. 800-2014-009437, is as follows:

1 This Public Reprimand is issued pursuant to Code section 2227 as a result of the
2 allegations set forth in the Accusation, relating to the failure to maintain adequate
3 and accurate records, failure to provide informed consent to a patient prior to a
4 surgical procedure, and, failure to meet the standard of care required for a surgical
5 procedure to remove a degenerative cyst from a patient's finger.

6 B. MEDICAL RECORD KEEPING COURSE

7 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
8 course in medical record keeping equivalent to the Medical Record Keeping Course offered by
9 the Physician Assessment and Clinical Education Program, University of California, San Diego
10 School of Medicine (Program), approved in advance by the Board or its designee. Respondent
11 shall provide the program with any information and documents that the Program may deem
12 pertinent. Respondent shall participate in and successfully complete the classroom component of
13 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
14 successfully complete any other component of the course within one (1) year of enrollment. The
15 medical record keeping course shall be at Respondent's expense and shall be in addition to the
16 Continuing Medical Education (CME) requirements for renewal of licensure.

17 A medical record keeping course taken after the acts that gave rise to the charges in the
18 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
19 or its designee, be accepted towards the fulfillment of this condition if the course would have
20 been approved by the Board or its designee had the course been taken after the effective date of
21 this Decision.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 C. EDUCATION COURSE. Within 60 calendar days of the effective date of this
26 Decision, Respondent shall submit to the Board or its designee for its prior approval educational
27 program(s) or course(s) which shall not be less than 40 hours. The educational program(s) or
28 course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be

1 Category I certified. The educational program(s) or course(s) shall be at Respondent's expense
2 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
3 licensure. Following the completion of each course, the Board or its designee may administer an
4 examination to test Respondent's knowledge of the course. Respondent shall provide proof of
5 attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

6 D. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
7 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
8 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
9 Respondent shall participate in and successfully complete that program. Respondent shall
10 provide any information and documents that the program may deem pertinent. Respondent shall
11 successfully complete the classroom component of the program not later than six (6) months after
12 Respondent's initial enrollment, and the longitudinal component of the program not later than the
13 time specified by the program, but no later than one (1) year after attending the classroom
14 component. The professionalism program shall be at Respondent's expense and shall be in
15 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

16 A professionalism program taken after the acts that gave rise to the charges in the
17 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
18 or its designee, be accepted towards the fulfillment of this condition if the program would have
19 been approved by the Board or its designee had the program been taken after the effective date of
20 this Decision.

21 Respondent shall submit a certification of successful completion to the Board or its
22 designee not later than 15 calendar days after successfully completing the program or not later
23 than 15 calendar days after the effective date of the Decision, whichever is later.

24 E. FAILURE TO COMPLY

25 Any failure by Respondent to comply with the terms and conditions of the Disciplinary
26 Order set forth above shall constitute unprofessional conduct and grounds for further disciplinary
27 action.

28 ///

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Dennis R. Thelen, Esq. I understand the stipulation and the effect
4 it will have on my Physician's and Surgeon's Certificate No. G 28242. I enter into this Stipulated
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
6 bound by the Decision and Order of the Medical Board of California.

7
8 DATED: 1/3/18


9 MARSHALL SAUL LEWIS, M.D.
Respondent

10 I have read and fully discussed with Respondent Marshall Saul Lewis, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13 DATED: 1/3/18


14 DENNIS R. THELEN, ESQ.
Attorney for Respondent


15
16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Medical Board of California.

19
20 Dated: 1/9/18

Respectfully submitted,

21 XAVIER BECERRA
Attorney General of California
22 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

23 
24 MICHAEL C. BRUMMEL
25 Deputy Attorney General
26 Attorneys for Complainant

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28 95249313.docx

Exhibit A

Accusation No. 800-2014-009437

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 MICHAEL C. BRUMMEL
Deputy Attorney General
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California Department of Justice
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Fresno, CA 93721
6 Telephone: (559) 477-1679
Facsimile: (559) 445-5106
7 E-mail: Michael.Brummel@doj.ca.gov

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO AUGUST 2, 2017
BY [Signature] ANALYST

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2014-009437

14 **Marshall Saul Lewis, M.D.**
2619 F Street
15 Bakersfield, CA 93301

ACCUSATION

16 **Physician's and Surgeon's Certificate**
No. G 28242,

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about October 4, 1974, the Medical Board issued Physician's and Surgeon's
25 Certificate No. G 28242 to Marshall Saul Lewis, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate No. G 28242 was in full force and effect at all times relevant to the charges
27 brought herein and will expire on December 31, 2018, unless renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 “(b) Gross negligence.

4 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
8 that negligent diagnosis of the patient shall constitute a single negligent act.

9 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 “...”

15 6. Section 2266 of the Code, states:

16 “The failure of a physician and surgeon to maintain adequate and accurate records relating
17 to the provision of services to their patients constitutes unprofessional conduct.”

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Gross Negligence)**

20 7. Respondent Marshall Saul Lewis, M.D. is subject to disciplinary action under section
21 2234, subdivisions (b) and/or section 2234, subdivision (a), of the Code, in that he committed acts
22 and/or omissions constituting gross negligence in the care and treatment of patient L.D. The
23 circumstances are as follows:

24 8. On or about September 4, 2014, patient L.D. presented to Respondent’s physician
25 assistant for orthopedic evaluation of a cyst on the right middle finger of his right hand. Patient
26 L.D. had a cyst for several years that was causing him pain and interfering with his work. Patient
27 L.D. was 63 years of age at the time of his first visit and his relevant medical history included a
28 prior injury to his hand requiring amputation of the proximal interphalangeal joint of his index

1 finger, and several unsuccessful attempts to remove the cyst on his right middle finger by a
2 dermatologist. An x-ray was ordered which revealed degenerative joint disease of the distal
3 interphalangeal joint with a large bone spur. Patient L.D. was diagnosed with interphalangeal
4 degenerative joint disease with spur and mucinous cyst ulnar aspect of distal interphalangeal joint
5 of his right middle finger.

6 9. On or about September 11, 2014, an MRI was performed which revealed a small
7 amount of fluid adjacent to the extensor tendon at the level of the proximal interphalangeal joint.

8 10. On or about September 18, 2014, patient L.D. reported to Respondent's office for a
9 history and physical prior to surgery. The history and physical was performed and signed by
10 Respondent's physician assistant. Respondent does not recall personally treating or discussing
11 the surgery with patient L.D. during this visit. Patient L.D. was scheduled for orthopedic surgery
12 with Respondent for right third digit excision of distal dorsal cystic mass with possible
13 arthrotomy, osteotomy, extensor tenolysis and tenosynovectomy. The physician assistant
14 reviewed the informed consent for general anesthesia and the surgery with patient L.D.

15 11. On or about September 24, 2014, patient L.D. arrived at the surgery center for
16 removal of the cyst from his right middle finger. Patient L.D. received and signed an informed
17 consent for endotracheal general anesthesia on the same day prior to surgery after a discussion
18 with the CRNA. Patient L.D. received and signed a preoperative consent form from Respondent
19 to perform a third digit right hand excision of a dorsal cystic mass with possible arthrotomy,
20 osteotomy, extensor tenolysis and tenosynovectomy. Respondent's records for patient L.D.
21 indicate that the general anesthesia began at approximately 7:30 a.m. and the surgery lasted from
22 7:50 a.m. to 9:05 a.m. Respondent's post operative notes state that he removed the "large dorsal
23 spur" and performed a "chondroplasty."

24 12. Patient L.D. complained of complications resulting from the surgery performed by
25 Respondent. Although patient L.D. no longer experienced pain from the cyst, his finger was stiff,
26 crooked and he had decreased mobility. Patient L.D. was advised to follow up with Respondent's
27 office one week after the surgery for a follow up visit, but he never saw Respondent again after
28 the surgery.

13. Respondent, the surgeon of record, was not present for and did not sign the September 18, 2014, history and physical performed on patient L.D. prior to surgery. Respondent never met face-to-face with patient L.D. prior to meeting him in the Tehachapi Surgery Center preoperative holding area. Respondent stated at his subject interview that he had no recollection of meeting patient L.D. prior to his surgery. Respondent did not discuss the plan for the surgical procedure with patient L.D. Respondent did not provide the opportunity for patient L.D. to ask questions prior to the surgery so that he could make relevant decisions regarding his course of therapy, proximate to the time of the proposed surgery.

14. Respondent's acts and/or omissions related to providing informed consent to patient L.D. prior to his surgery constitute an extreme departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

15. Respondent Marshall Saul Lewis, M.D. is subject to disciplinary action under section 2234, subdivisions (c) and/or section 2234, subdivision (a), of the Code, in that he committed acts and/or omissions constituting negligence in the care and treatment of patient L.D. The circumstances are as follows:

16. The allegations contained in paragraph 8 through 14 are incorporated by reference as if set forth fully herein.

17. Prior to surgery, Respondent required patient L.D. to undergo an EKG, extensive metabolic panel, urinalysis, chest x-ray, and MRI of his long finger. All of the tests were performed at Respondent's office. While the EKG was medically indicated, the extensive metabolic panel, urinalysis, chest x-ray and MRI were excessive and not indicated for the treatment of patient L.D.'s degenerative cyst of the finger given his age and medical history. The MRI of patient L.D.'s long finger had no clinical utility to assist in the diagnosis or surgical treatment in addition to the x-ray.

18. Respondent performed surgery on patient L.D. to remove a degenerative cyst from his finger. Patient L.D. requested that Respondent place him under local anesthesia for the procedure. Although the surgery was a relatively minor outpatient procedure, Respondent elected

1 to place L.D. under general rather than local anesthesia. Respondent's decision to place L.D.
2 under general anesthesia for a surgery to remove a degenerative cyst from his finger created
3 unnecessary increased risk to the patient and increased cost for the procedure.

4 19. Patient L.D. presented to Respondent with degenerative cyst of his finger. L.D.'s
5 condition medically indicated surgery including excision of the cyst, arthrotomy and removal of
6 all cystic material from the joint and removing small amounts of degenerative bone with an
7 exostectomy to minimize the possibility that the cyst would reoccur. In his operative note,
8 Respondent claims that he performed a chondroplasty, an osteotomy and extensive tenolysis.
9 Although Respondent documented preforming an osteotomy, which indicates the cutting of bone,
10 this was not done. There was no medical indication to perform a chondroplasty or tenolysis in
11 removing patient L.D.'s cyst.

12 20. Respondent billed patient L.D.'s insurance company for care provided related to the
13 removal of patient L.D.'s cyst. Respondent billed the insurance company indicating that he
14 opened a joint that was infected for exploration or to remove a foreign body, which was incorrect
15 for the treatment of patient L.D. involving the excision of a tumor or vascular malformation.
16 Respondent billed the insurance company for the osteotomy of the distal shaft of the radius and
17 the osteotomy of the middle or proximal aspect of the radius, both bones located in the forearm
18 that were incorrect for the removal of the cyst from patient L.D.'s finger. Respondent billed the
19 insurance company for the release of a finger tendon that was not medically indicated in the
20 treatment of patient L.D. Respondent's billings were incorrect and excessive.

21 21. Patient L.D. resides approximately 43 miles from Respondent's office where he
22 received all of his preoperative care. Respondent has privileges and does perform surgeries in
23 Bakersfield, but he prefers to perform surgeries at his Tehachapi Surgery Center. Patient L.D.
24 stated that Respondent determined that the surgery would occur at his Tehachapi Surgery Center
25 and he was not provided with the option to have the surgery closer to his home in Bakersfield.
26 The Tehachapi Surgery Center is located approximately 85 miles from Patient L.D.'s home,
27 which required an approximately 170 mile round trip for the minor outpatient surgery.
28

1 22. Respondent failed to conduct an appropriate pre-operative workup for patient L.D.,
2 which constitutes a departure from the standard of care.

3 23. Respondent placed patient L.D. under general anesthesia rather than local anesthesia
4 during a procedure to remove a degenerative cyst from his finger, which constitutes a departure
5 from the standard of care.

6 24. Respondent failed to offer patient L.D. the opportunity to have the surgery performed
7 at a location closer to his home, which constitutes a departure from the standard of care.

8 25. Respondent's documentation in the operative report of the procedures performed on
9 patient L.D. constitute a departure from the standard of care.

10 26. Respondent's billing for the operative procedures to remove patient L.D.'s cyst was
11 incorrect and/or excessive, which constitutes a departure from the standard of care.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Recordkeeping)**

14 27. Respondent Marshall Saul Lewis, M.D. is subject to disciplinary action under section
15 2266, of the Code, in that he committed acts and/or omissions constituting negligence in the care
16 and treatment of patient L.D. The circumstances are as follows:

17 28. The allegations contained in paragraph 8 through 27 are incorporated by reference as
18 if set forth fully herein.

19 29. Respondent failed to maintain adequate and accurate medical records in the care and
20 treatment of patient L.D., which constitutes a departure from the standard of care.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Medical Board of California issue a decision:

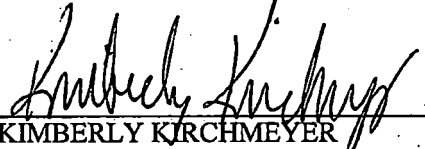
4 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 28242, issued to
5 Respondent, Marshall Saul Lewis, M.D.;

6 2. Revoking, suspending or denying approval of Respondent, Marshall Saul Lewis,
7 M.D.'s authority to supervise physician assistants and advanced practice nurses;

8 3. Ordering Respondent, Marshall Saul Lewis, M.D., if placed on probation, to pay the
9 Board the costs of probation monitoring; and

10 4. Taking such other and further action as deemed necessary and proper.

11
12 DATED: August 2, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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17 FR2017303987
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